REMARKS

Claims 1- 27 and 29 - 31 are pending and under consideration in the above-identified application and Claim 28 was previously withdrawn from consideration.

In the Office Action of November 10, 2008, Claims 1 - 27 and 29 -31 were rejected.

In this Amendment, Claims 1 – 27, and 30 – 31 have been amended. No new matter has been introduced as a result of this Amendment. Claims 1- 27 and 29 - 31 remain at issue.

I. Objection to the Specification

As required by the Examiner, the Abstract has been amended to remove the phrasing "is disclosed".

The specification has been amended, namely in paragraph [0016], to further define the term "computer readable medium" recited in Claims 29 – 31. This amendment is in line with the Examiner's interpretation of the term "medium". As such, no new matter has been introduced.

Accordingly, Applicants respectfully request withdrawal of the specification objection.

II. 35 U.S.C. § 101 Rejection of Claims

Claims 1 – 14 were rejected under 35 U.S.C. § 101 to because the claimed invention is directed to non-statutory matter.

As required by the Examiner, Applicants appropriately corrected the claims at issue. No new matter has been introduced.

Accordingly, Applicants respectfully request withdrawal of the claim rejection.

III. Claim Objections

Claims 2 – 14, 16 – 27, and 30 – 31 were rejected because of the following informalities.

As required by the Examiner, Applicants have corrected the claims at issue.

Accordingly, Applicants respectfully request withdrawal of these claim objections.

IV. 35 U.S.C. § 112 Indefiniteness Rejection of Claims

Claims 2- 6 and 8 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As required by the Examiner, the claims at issue have been amended to remove the indefiniteness. No new matter has been introduced.

Accordingly, Applicants respectfully request withdrawal of the claim rejection.

V. 35 U.S.C. § 102 Anticipation of Claims

Claims 1 – 26 and 29 – 31 were rejected under 35 U.S.C. § 102(b) as being anticipated by Agesen et al. ("Agesen") (U.S. Patent Publication No. 2001/0044856 A1).

Claim 1 is directed to a method in a data processing system having a program for allocating objects in a memory portion that includes a Young Generation and at least one Older Generation.

In relevant part, Claim 1 recites:

> "…(a) determining whether at least one object should be allocated in said Young Generation in accordance with a first promotion policy exercised for promoting objects from said Young Generation to an Older Generation of said memory portion;
>
> (b) determining a second promotion policy for said at least one object when said determining (a) determines that said object should not be allocated in said Young Generation in accordance with said first promotion policy; and
>
> (c) storing said at least one object in said Young Generation in accordance with said second policy when said determining (b) determines the second promotion policy for said object."

That is, a second promotion policy determines that an object should be stored in a Young Generation of a memory portion after a first promotion policy determines that the object should not be allocated in the Young Generation. The first promotion policy is exercised for promoting objects from the Young Generation to an Old Generation of the memory portion.

This is clearly unlike Agesen.

The Examiner indicates that Agesen discloses determining a second promotion policy for the at least one object when it is determined that the at least one object should not be allocated in

the Young Generation in accordance with a first promotion policy, and storing the at least one object in the Young Generation in accordance with the determined second promotion policy, and points to paragraphs [0068], [0099], [0102], and [0121] - [0123].

However, Applicants submit that nowhere does Agesen fairly teach or suggest a second promotion policy that determines that the at least one object be stored when it is determined that the at least one object should not be allocated in the Young Generation in accordance with the first promotion policy. For example, in paragraph [00121], Agesen states (emphasis added):

> "[0121] Fast path allocation efficiency may be improved if we are able to recompile the methods for the allocation sites where we wish to set a particular tenuring policy. In some execution environments such adaptation is straightforward. For example, some Java virtual machine implementations provide mechanisms for scheduling a method to be recompiled. *When a change in policy is desired, the methods dependent on a given allocation-site are recompiled to implement the new object-tenuring policy. One advantage of implementations that provide some level of hysteresis in decision-making is to reduce potentially excessive recompilation of the same allocation methods.*"

That is, Agesen does teach changes in policy but does not teach utilizing more than one policy to determine whether an object should be stored to a Young Generation or to an Old Generation of a memory portion. Thus, Agesen fails to teach or suggest "(b) determining a second promotion policy for the at least one object when the determining (a) determines that the object should not be allocated in the Young Generation in accordance with the first promotion policy, and (c) storing the at least one object in the Young Generation in accordance with the second policy when the determining (b) determines the second promotion policy for the at least one object", as required by Claim 1.

Thus, Agesen fails to disclose or suggest all of the limitations of Claim 1. As such, Claim 1 is patentable over Agesen, as are directly or indirectly dependent Claims 2 - 14, for at least the same reasons.

Independent Claims 15 and 29, each of which recites the same distinguishable limitation as that of Claim 1, are also patentable over Agesen, as are dependent Claims 16 - 27 and 30 -31, for at least the same reasons.

Accordingly, Applicants respectfully submit that the claim rejection has been overcome and requests that it be withdrawn.

VI. 35 U.S.C. § 103 Obviousness rejection of Claims

Claim 27 was rejected under 35 U.S.C. § 103**(a)** as being unpatentable over Agesen in view of Hayward (U.S. Publication No. 2003/0187888).

Claim 27 is dependent on Claim 15, shown above to be patentable over Agesen. Moreover, in addition to Agesen, Hayward also fails to fairly teach or suggest "(b) determining a second promotion policy for the at least one object when the determining (a) determines that the object should not be allocated in the Young Generation in accordance with the first promotion policy, and (c) storing the at least one object in the Young Generation in accordance with the second policy when the determining (b) determines the second promotion policy for the at least one object".

Thus, no combination of the cited references fairly teaches or suggests the subject matter of Claim 15. Accordingly, Claim 15 is patentable over the cited references, taken singly or in any combination with each other, as is dependent Claim 27, for at least the same reasons.

Accordingly, Applicants respectfully request that the claim rejection be withdrawn.

VII. Conclusion

In view of the foregoing, it is submitted that Claims 1- 27 and 29 - 31 are allowable and that the application is in condition for allowance. Notice to that effect is requested.

If the claims are not found to be in condition for allowance, the Examiner is requested to contact the undersigned to schedule an interview before the mailing of the Office Action. Any communication initiated by this paragraph should be deemed an Applicant initiated interview

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Respectfully submitted,

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